



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF THE RATEPAYER ADVOCATE
31 CLINTON STREET, 11TH FLOOR
P.O. BOX 46005
NEWARK NJ 07101

CHRISTINE TODD WHITMAN
Governor

RECEIVED
JAN 16 1996
FCC MAIL ROOM

Blossom A. Peretz
Director

BRIAN W. CLYMER
State Treasurer

January 12, 1996

VIA U.S. EXPRESS MAIL

Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

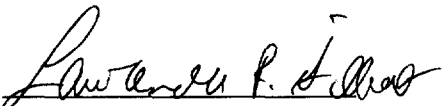
RE: I/M/O Implementation of Sections of the
Cable Television Consumer Protection and Competition
Act of 1992--Rate Regulation CS Docket 95-174

TO THE HONORABLE COMMISSION:

Enclosed please find an original and nine copies of Comments to be filed with the Commission in the above-referenced matter. An additional copy is also enclosed which we respectfully request that the FCC time/date stamp and return it to our office in the return envelope.

Respectfully submitted,

BLOSSOM A. PERETZ, ESQ.
RATEPAYER ADVOCATE

By: 
Lawanda R. Gilbert
Assistant Deputy Public Advocate

LRG:ch
cc: Service List

No. of Copies rec'd 0410
List ABCDE

I/M/O IMPLEMENTATION OF SECTIONS OF THE CABLE
TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992
RATE REGULATION CS DOCKET 95-174

COMMISSIONER HERBERT H. TATE
BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER
NEWARK, NJ 07102

CASE MANAGEMENT
BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER
NEWARK, NJ 07102

COMMISSIONER EDWARD H. SALMON
BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER
NEWARK, NJ 07102

EUGENE PROVOST, DAG
DIVISION OF LAW
124 HALSEY ST. - 5TH FL.
NEWARK, NJ 07102

COMMISSIONER CARMEN J. ARMENTI
BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER
NEWARK, NJ 07102

ERIC ANDREWS, DAG
DIVISION OF LAW
124 HALSEY ST. - 5TH FL.
NEWARK, NJ 07102

JAMES A. NAPPI, SECRETARY
BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER
NEWARK, NJ 07102

CELESTE FASONE, DIRECTOR
OFFICE OF CABLE
BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER
NEWARK, NJ 07102

FRED GRYGIEL, CHIEF ECONOMIST
BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER
NEWARK, NJ 07102

MICHAEL AMBROSIO, EXECUTIVE
OFFICER
BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER
NEWARK, NJ 07102

MICHAEL GALLAGHER, DIRECTOR
OFFICE OF TELECOMMUNICATIONS
BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER
NEWARK, NJ 07102

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	CS Docket 95-174
Implementation of Sections of)	
the Cable Television Consumer Protection)	
and Competition Act of 1992--Rate Regulation)	

**COMMENTS OF THE NEW JERSEY DIVISION OF THE
RATEPAYER ADVOCATE**

On behalf of utility consumers in the State of New Jersey, the Division of the Ratepayer Advocate (the "Ratepayer Advocate") hereby submits comments seeking a further inquiry in the above-referenced proceeding to insure that the Federal Communication Commission's ("FCC") proposals for uniform rate regulation provide adequate protection to cable consumers.

INTRODUCTION

The Ratepayer Advocate was established in 1994 by Governor Christine Todd Whitman's Government Reorganization Plan. See 26 N.J.R. 2171 (June 6, 1995). The Ratepayer Advocate seeks to represent and protect the interests of all utility consumers--residential, small business, commercial and industrial, to ensure that they receive safe, adequate and proper utility service at

affordable rates that are just and nondiscriminatory. The New Jersey Board of Public Utilities (“BPU”), is the cable franchising authority for the entire state of New Jersey. All requests by regulated utilities and cable television operators for increases in rates must be approved by the BPU. The Ratepayer Advocate is a statutory intervenor in cases where cable operators seek to alter their rates or services. Whenever it is in the best interests of consumers, the Ratepayer Advocate negotiates with cable operators and attempts to settle as many issues as possible without, or before, going to a contested hearing. The Ratepayer Advocate also plays an active role in telecommunications policy making, and has filed comments in previous FCC proceedings.

DISCUSSION

The FCC issued a Notice of Proposed Rulemaking (“NPRM”) on November 29, 1995 regarding a proposal to allow cable operators to file uniform rates covering multiple franchise areas. Current regulations require each cable system to file separately for each franchise area. This allows current cable rates to reflect the particular costs associated with serving each franchise area. This specificity is significant given that the benchmark rates which were used to establish the initial level of basic service rates considered such factors as census income, subscribership, and franchise-related costs.

The FCC is proposing that cable operators be allowed to file uniform rates over multiple franchise areas. The FCC believes that “permitting operators serving multiple franchise areas to establish uniform services at uniform rates in all such areas would be beneficial for subscribers,

franchising authorities, and operators.”¹ The FCC proposes two methodologies to implement uniform rates.

The first methodology put forth in the NPRM would require basic service rates to be set at the lowest regulated basic service tier rate charged in any single franchise in the multi-franchise areas. The revenue shortfall resulting from this methodology would be applied to the revenue requirement of the CPST, which would then be spread equally among all CPST subscribers.

The second methodology discussed in the NPRM is a rate averaging approach, whereby basic service rates would be averaged on a per subscriber basis, and Cable Programming Service Tiers (CPST) rates would be averaged on a per subscriber basis. For reasons discussed later in these comments, if one of these methodologies is adopted, the Ratepayer Advocate believes that the first method is preferable.

The authority to regulate the rates, services and operations of cable television companies in New Jersey rests with the BPU by statute, although more than 500 individual municipalities initially issue Consent Ordinances to permit and renew cable operations within a specified area. See N.J.S.A. 48:5A et seq.; N.J.A.C. Chapt. 18; 47 C.F.R. 76.910 (e). Within the BPU, the Office of Cable Television administers more than 70 separate cable rate districts, each of which contains multiple contiguous municipalities. For example, TCI of Northern New Jersey charges the same rates in 53 municipalities. This use of rate districts, which requires uniform offerings within districts, is a form of uniform rate setting already in place within the state of New Jersey. “Uniform” rate districts have

¹ Federal Communications Commission, NOTICE OF PROPOSED RULEMAKING (“NPRM”): *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992--Rate Regulation; Uniform Rate Setting Methodology*; CS Docket No. 95-174, pg. 6.

already been implemented in New Jersey and the methodology and districts utilized by the state franchise authority, the BPU, should be permitted to continue on a grandfathered basis.

In reference to the FCC's request for comments on whether the Area of Dominant Influence (ADI) or some other region would be appropriate for the setting of uniform rates, the Ratepayer Advocate recommends that the FCC acknowledge existing regions, such as the rate districts used in New Jersey. The Ratepayer Advocate would oppose permitting cable operators to select the region in which to set uniform rates under a uniform rate-setting method. This decision should remain with the BPU in New Jersey, which has the authority to accept, modify or reject cable company filings.

Additionally, in jurisdictions which do not have established regions, we believe that a uniform rate should be limited to a common ADI, and within a state. Since franchising authorities will differ from state to state, we believe that all regulatory forms should be filed on a state-specific basis in order to simplify review. Furthermore, the goal of the uniform rate is to make it easier and less costly for the company to advertise its rates and to minimize customer confusion. In order to achieve these economies, uniform rates should generally be on an ADI-specific basis and any marketing efficiencies passed on to consumers. Since the cable operator's obligation under the "must-carry" rules to carry local over-the-air broadcast channels, and their copyright fee responsibilities are based on ADI, the Ratepayer Advocate believes that it may be appropriate to limit uniform rates to franchise areas located within the same ADI (or its replacement region). To the extent a cable operator was willing to meet the service obligations in more than one ADI, resulting in a uniform offering more broadly, the Ratepayer Advocate would not object to a uniform rate region spanning more than one ADI.

While the Ratepayer Advocate supports the concept of uniform rates among multiple franchise areas offering uniform services, we believe that the perceived benefits as identified by the FCC should be more closely examined. If the FCC decides to permit uniform rates among multiple franchise areas, the Ratepayer Advocate believes that the FCC must ensure that the basic service subscribers in one franchise area do not bear the costs of franchising requirements placed upon the cable operator by another franchise authority. With regard to the first proposal put forth by the FCC, which would implement uniform rates by establishing a uniform basic tier rate at the lowest level of currently established rates, the Ratepayer Advocate believes that this method would ensure that such subsidization at the basic service level does not take place. The Ratepayer Advocate believes that, whenever possible, increases in the pricing of the basic service tier ("BST") rates should be kept at a minimum, in order to preserve a minimum level of affordable cable television service for customers. Since the CPST is optional, the Ratepayer Advocate believes that the distribution of the BST rate reductions among the CPST rates charged in neighboring franchise areas, as suggested under the first proposal, assists in protecting subscribers from unreasonable BST rates. Recognizing that many BST subscribers are also CPST subscribers, the FCC may also want to consider capping the percentage increase to the CPST resulting from the establishment of uniform rates.

With the caveat of protecting local franchise authority and basic tier subscribers, the Ratepayer Advocate would prefer the first proposal rather than the second proposal in the NPRM, which would provide for "blended" BST and CPST rates, determined by averaging the operator's total rates per tier, on a per subscriber basis for all subscribers in the region. The FCC acknowledges that the averaging of rates in the second proposal could result in increases in the BST rates as they are adjusted to establish uniformity. With regard to the FCC's request for comments on the benefits

and costs of adopting this formula given that certain BST subscribers may experience rate increases, the Ratepayer Advocate would oppose any methodology which would result in increases to the BST rates.

Additionally, with regard to the FCC's requests for comments on whether cable operators should be permitted to itemize and charge for franchise related costs outside the uniform rate setting formula, the Ratepayer Advocate would oppose any such methods. Such a proposal defeats the purpose of having one uniform rate that can be advertised in a wide service area. Under this approach, promotional literature would have to carry a caveat that the stated rate(s) was exclusive of franchise-related costs. This could create even more customer confusion when subscribers receive their bills and see a rate that is different from the advertised rate for service. Therefore, it appears that a good deal of the benefit is eliminated if the uniform rate does not include franchise-related costs.

With regard to the FCC's request for comments on any additional obstacles to the establishment of uniform rates, we believe that there may be outstanding issues on how to deal with rate increases, particularly under the first proposal, on a going-forward basis. The FCC should closely examine the most equitable approach to dealing with disparate increases in franchise costs, programming costs, and other "external costs" among communities.

SUMMARY

While we support uniform rates over multiple franchise areas for uniform services, we believe that the benefits for areas such as New Jersey, where uniform rate-setting already exists, should not be preempted by FCC rulemaking. If such an approach is adopted, we recommend

establishing the uniform rate at the lowest current basic rate within the multiple franchise area. The other proposed methodology, whereby an average basic rate would be employed, may be easier to administer but it would cause low franchise cost areas to subsidize high franchise cost areas. A rate averaging approach may send the wrong signal to cable operators and to franchising authorities. Finally, we believe that the uniform rate area should be based on ADIs, and should be on a state-specific basis.

In summary, the Ratepayer Advocate respectfully requests that the FCC take a close look at the impact of its proposals on existing subscribers, the extent of realignment, and the continued ability of the BPU of New Jersey to implement its statutory jurisdiction over the rate review process while protecting consumers.

Respectfully submitted,

State of New Jersey
Department of the Treasury
Division of the Ratepayer Advocate
31 Clinton Street, 11th Floor
Newark, New Jersey 07101
(201) 648-2690

Dated: January 12, 1996


Blossom A. Peretz, Director